

FCC MAIL SECTION

May 27 10 11 AM '93
Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY MM Docket No. 93-142

In the Matter of

Amendment of Section 73.606(b), RM-8208
Table of Allotments,
TV Broadcast Stations.
(Willits, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 7, 1993; Released: May 27, 1993

Comment Date: July 19, 1993

Reply Comment Date: August 3, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Granite Broadcasting Corporation and KNTV, Inc.¹ ("petitioner"), seeking the deletion of vacant VHF television Channel 11 at Willits, California, or alternatively, the substitution of a UHF channel for the vacant Willits allotment to accommodate petitioner's relocation plans.

2. In support of the proposal, KNTV, Inc., licensee of Station KNTV(TV), Channel 11, San Jose, California, states that the deletion of vacant VHF television Channel 11 at Willits, or the substitution of a UHF channel therefor, would enable it to relocate its transmitter to a more seismically stable site. In this regard, petitioner states that its current transmitter site on Loma Prieta Peak, in the Santa Cruz Mountains, is located on the Sargent-Berrocal fault,² which is connected to the San Andreas fault. Having sustained damage to Station KNTV(TV)'s transmitting tower and antenna previously in the Loma Prieta earthquake in October 1989, petitioner desires to relocate its tower to a less vulnerable area. Petitioner urges that not only is it concerned about the potential future financial cost of de-

struction posed by future seismic activity in the immediate vicinity of its existing transmitter, but since it is San Jose's primary television source of news, it is important that it be able to fulfill its role of providing essential information in future emergencies as well.

3. According to petitioner's consulting engineer, geographic and topographic factors combined would require any movement of Station KNTV(TV)'s transmitter site northward. However, petitioner advises that the presence of vacant Channel 11 at Willits constrains its ability to relocate Station KNTV(TV)'s tower to the north.³ Moreover, petitioner claims that further movement to the south would result in the degradation of signal quality and terrain shielding into San Jose due to the Santa Cruz Mountains. Petitioner also advises that movement of Station KNTV(TV)'s tower is limited to the east by Station KRXI(TV), Channel 11, Reno, Nevada.⁴

4. In further support of the requested deletion, petitioner comments that Channel 11 at Willits is presently unavailable for application as a result of the current freeze on the filing of petitions for new allotments and applications for vacant allotments in certain metropolitan areas.⁵ Willits is located with 189.5 miles (304.9 kilometers) of San Francisco, one of the affected freeze markets. Additionally, petitioner states that Channel 11 may be deleted in the course of the Commission's advanced television ("ATV") proceeding.^{6, 7} Consequently, petitioner maintains that deletion of Channel 11 at Willits would not deprive the community of potential television service since that service may never be authorized. However, in the event the Commission is reluctant to delete Channel 11 in the rule making context, or an expression of interest in retaining the allotment is received, petitioner advises that numerous UHF channels are available to Willits as an alternative equivalent substitute channel.^{8, 9}

5. Preliminary, we note that although Channel 11 was allotted to Willits at the request of a petitioner over five years ago,¹⁰ it has been unavailable for applications pending resolution of the Commission's ATV proceeding, *supra*. While we are hesitant to delete VHF Channel 11 at Willits under the circumstances, we will provisionally propose to do so, as requested. However, we question whether petitioner's proposal could be accommodated from its intended site for Station KNTV(TV) by further site restricting Channel 11 at Willits, or whether petitioner could operate Station KNTV(TV) in a manner designed to avoid interference to the Willits allotment. In the event petitioner determines that Channel 11 can be further site restricted at Willits, it should provide a reasonable assurance that a transmitter

¹ Petitioner advises that KNTV, Inc. is a wholly-owned subsidiary of Granite.

² According to information provided by petitioner, the Sargent-Berrocal fault system is estimated to have a maximum magnitude earthquake potential of 7.4 Richter.

³ Coordinates at the reference site for Channel 11 at Willits are 39-32-28 and 123-29-16.

⁴ Coordinates at the authorized site of Station KRXI(TV) are 39-35-25 and 119-55-40.

⁵ See Order, *Advanced Television Systems and Their Impact on the Existing Television Service*, 52 Fed. Reg. 28346, published July 29, 1987.

⁶ Petitioner cites to the *Second Further Notice of Proposed Rule Making* in the ATV proceeding, MM Docket No. 87-268, 7 FCC Rcd 3340 (1992).

⁷ Petitioner's statements regarding the Commission's possible

future deletion of any channel from the Table of TV Allotments are purely speculative.

⁸ Petitioner provided engineering studies to demonstrate that at least twenty UHF channels are available to Willits without a site restriction, at coordinates 39-24-36 and 123-21-12. Channel 11 at Willits has an 18.7 kilometer (11.6 mile) site restriction.

⁹ Petitioner's engineering studies claim that since Willits is surrounded by mountains which rise approximately 2,000 feet higher than the community, with nearby peaks reaching 4,600 and 6,800 feet above mean sea level (AMSL), the terrain factors would serve to provide coverage from a UHF-TV facility at Willits comparable or equivalent to coverage from a VHF-TV facility.

¹⁰ See *Report and Order*, MM Docket No. 86-96, 2 FCC Rcd 6962 (1987).

site conforming to the site restriction is available at that community. See *Cave City and Radcliff, Kentucky and Santa Claus, Indiana*, 7 FCC Rcd 1363 (1992). Petitioner should also state if there are no transmitter sites available for Station KNTV(TV) that would not cause short-spacing to Channel 11 at Willits. If other sites are available, petitioner should demonstrate why those other locations are not suitable to accommodate its relocation plans. Furthermore, if petitioner intends to relocate to a specific site, it should explain why that particular site is less susceptible to earthquakes than other sites in the area.¹¹ Failure to provide the requested information could result in a denial of the proposal.

6. While petitioner has alternatively suggested the substitution of a UHF channel as a replacement for VHF Channel 11 at Willits, we are unable to accommodate that aspect of its request in the context of this *Notice*. Consideration of a new UHF allotment at Willits is limited by the terms of the Commission's current freeze since that community is located within 304.9 kilometers (189.5 miles) of San Francisco, one of the affected markets. The Commission is currently in the process of developing a Table of ATV Allotments. As San Francisco is a high density market where optimizing ATV allotments is a difficult task, we would only consider petitioner's substitution request provided an acceptable UHF channel can be found after the Commission determines an allotment plan for ATV use in the San Francisco area.

7. We believe the public interest would be served by seeking comments on the proposal to delete VHF television Channel 11 at Willits, California, to accommodate petitioner's relocation plans. In the event an expression of interest in retaining the channel at Willits is received, the allotment may not be deleted absent a compelling showing that the public interest would be better served by the deletion. Alternatively, in the absence of a public interest showing, an expression of interest may result in the substitution of a UHF channel at Willits provided the provisions set forth in paragraph 6 above can be satisfied.¹²

8. In view of the above, we seek comments on the proposed amendment to the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to Willits, California, as follows:

City	Channel No.	
	Present	Proposed
Willits, California	11-	--

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we

note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **July 19, 1993**, and reply comments on or before **August 3, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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 Paul S. Pien, Esq.
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11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

¹¹ According to the Declaration of Richard E. Hammond, petitioner's consultant on seismic events, while Loma Prieta Peak is a poor location for a television transmitter in terms of seismic risk, other locations appear to be available in the greater San Francisco Bay Area that are less prone to severe earth movement.

¹² In the event the latter course of action is pursued, we address petitioner's claim concerning UHF-VHF interband comparability. While a VHF station, in general, is capable of providing greater coverage than a UHF station, the Commission is continually striving to achieve greater equality between UHF-VHF

service through comparability of tuning, improvement of UHF signal quality and education of the public. See *Memorandum Opinion and Order and Notice of Proposed Rule Making*, Docket No. 20418, 63 FCC 2d 840, 861 (1977). Regardless, in this instance, we believe that the substitution of a UHF channel at Willits could be considered reasonable because favorable terrain and propagation conditions extant in the area surrounding Willits are likely to result in coverage more nearly comparable to a VHF station than would generally be the case in other parts of the country.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.